



General Assembly

January Session, 2009

Amendment

LCO No. 8958

SB0036208958SD0

Offered by:
SEN. PRAGUE, 19th Dist.

To: Subst. Senate Bill No. 362

File No. 78

Cal. No. 141

"AN ACT CONCERNING EQUAL PAY FOR EQUAL WORK."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 31-294d of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

5 (a) (1) The employer, as soon as the employer has knowledge of an
6 injury, shall provide a competent physician or surgeon to attend the
7 injured employee and, in addition, shall furnish any medical and
8 surgical aid or hospital and nursing service, including medical
9 rehabilitation services and prescription drugs, as the physician or
10 surgeon deems reasonable or necessary. The employer, any insurer
11 acting on behalf of the employer, or any other entity acting on behalf of
12 the employer or insurer shall be responsible for paying the cost of such
13 prescription drugs directly to the provider.

14 (2) If the injured employee is a local or state police officer, state
15 marshal, judicial marshal, correction officer, emergency medical
16 technician, paramedic, ambulance driver, firefighter, or active member

17 of a volunteer fire company or fire department engaged in volunteer
18 duties, who has been exposed in the line of duty to blood or bodily
19 fluids that may carry blood-borne disease, the medical and surgical aid
20 or hospital and nursing service provided by the employer shall include
21 any relevant diagnostic and prophylactic procedure for and treatment
22 of any blood-borne disease.

23 (b) The employee shall select the physician or surgeon from an
24 approved list of physicians and surgeons prepared by the chairman of
25 the Workers' Compensation Commission. If the employee is unable to
26 make the selection, the employer shall do so, subject to ratification by
27 the employee or his next of kin. If the employer has a full-time staff
28 physician or if a physician is available on call, the initial treatment
29 required immediately following the injury may be rendered by that
30 physician, but the employee may thereafter select his own physician as
31 provided by this chapter for any further treatment without prior
32 approval of the commissioner.

33 (c) The commissioner may, without hearing, at the request of the
34 employer or the injured employee, when good reason exists, or on his
35 own motion, authorize or direct a change of physician or surgeon or
36 hospital or nursing service provided pursuant to subsection (a) of this
37 section.

38 (d) The pecuniary liability of the employer for the medical and
39 surgical service required by this section shall be limited to the charges
40 that prevail in the same community or similar communities for similar
41 treatment of injured persons of a like standard of living when the
42 similar treatment is paid for by the injured person. The liability of the
43 employer for hospital service shall be the amount it actually costs the
44 hospital to render the service, as determined by the commissioner,
45 except in the case of state humane institutions, the liability of the
46 employer shall be the per capita cost as determined by the Comptroller
47 under the provisions of section 17b-223. All disputes concerning
48 liability for hospital services in workers' compensation cases shall be
49 settled by the commissioner in accordance with this chapter.

50 (e) If the employer fails to promptly provide a physician or surgeon
51 or any medical and surgical aid or hospital and nursing service as
52 required by this section, the injured employee may obtain a physician
53 or surgeon, selected from the approved list prepared by the chairman,
54 or such medical and surgical aid or hospital and nursing service at the
55 expense of the employer.

56 (f) If an employer has good cause to believe that proposed treatment
57 recommended by (1) a medical provider participating in an employer
58 medical care plan approved pursuant to the provisions of section 31-
59 279, as amended by this act; (2) a physician identified in an approved
60 voluntary agreement pursuant to section 31-296; or (3) a provider to
61 whom the employee has been referred by such physician or medical
62 provider for treatment, is unreasonable and unnecessary, the employer
63 shall promptly issue a written notice to the employee and employee's
64 representative, if any, indicating the medical evidence upon which it
65 relies for concluding that the proposed treatment is unnecessary and
66 unreasonable. If the employer wishes to support its denial of such
67 treatment by a medical examination pursuant to section 31-294f, the
68 employer shall, not later than seven days after receipt of the
69 recommendation of the proposed treatment from the medical provider
70 or physician, provide a written notice to the employee and employee's
71 representative, if any, of the employer's intent to seek a medical
72 examination, in accordance with the provisions of this subsection and
73 subsection (a) of section 31-294f. Such medical examination shall occur
74 not later than forty-five days after the receipt of the recommendation
75 of the proposed treatment from the medical provider or physician. If
76 an employer fails to satisfy the requirements of this subsection, the
77 commissioner may, in any subsequent proceeding authorizing such
78 treatment, issue orders imposing remedies available in subsection (b)
79 of section 31-288 and section 31-300.

80 Sec. 502. Subsection (b) of section 31-288 of the general statutes is
81 repealed and the following is substituted in lieu thereof (*Effective*
82 *October 1, 2009*):

83 (b) (1) Whenever through the fault or neglect of an employer or
84 insurer, the adjustment or payment of compensation due under this
85 chapter or the provision of reasonable or necessary medical treatment
86 is unduly delayed, such employer or insurer may be assessed by the
87 commissioner hearing the claim a civil penalty of not more than one
88 thousand dollars for each such case of delay, to be paid to the claimant.
89 For purposes of this subsection, the failure to promptly provide
90 medical services recommended by (A) a medical provider
91 participating in an employer medical care plan approved pursuant to
92 the provisions of section 31-279, as amended by this act; (B) a physician
93 identified in an approved voluntary agreement pursuant to section 31-
94 296; or (C) a provider to whom the employee has been referred by such
95 medical provider or physician for recommended treatment, shall be
96 presumed to be the unreasonable delay of treatment without good
97 cause unless the commissioner finds the recommended medical care
98 was unreasonable and unnecessary at the time such care was
99 recommended.

100 (2) Whenever either party to a claim under this chapter has
101 unreasonably, and without good cause, delayed the completion of the
102 hearings on such claim, the delaying party or parties may be assessed a
103 civil penalty of not more than five hundred dollars by the
104 commissioner hearing the claim for each such case of delay. Any
105 appeal of a penalty assessed pursuant to this subsection shall be taken
106 in accordance with the provisions of section 31-301.

107 Sec. 503. Section 31-279 of the general statutes is amended by adding
108 subsection (f) as follows (*Effective October 1, 2009*):

109 (NEW) (f) The Workers' Compensation Commission shall have
110 plenary review of decisions with respect to the provision or denial of
111 medical care under any plan approved by the chairperson under
112 subsection (d) of this section and may determine whether such medical
113 care is reasonable or necessary.

114 Sec. 504. Section 31-300 of the general statutes is repealed and the

115 following is substituted in lieu thereof (*Effective October 1, 2009*):

116 As soon as may be after the conclusion of any hearing, but no later
117 than one hundred twenty days after such conclusion, the
118 commissioner shall send to each party a written copy of the
119 commissioner's findings and award. The commissioner shall, as part of
120 the written award, inform the employee or the employee's dependent,
121 as the case may be, of any rights the individual may have to an annual
122 cost-of-living adjustment or to participate in a rehabilitation program
123 under the provisions of this chapter. The commissioner shall retain the
124 original findings and award in said commissioner's office. If no appeal
125 from the decision is taken by either party within twenty days
126 thereafter, such award shall be final and may be enforced in the same
127 manner as a judgment of the Superior Court. The court may issue
128 execution upon any uncontested or final award of a commissioner in
129 the same manner as in cases of judgments rendered in the Superior
130 Court; and, upon the filing of an application to the court for an
131 execution, the commissioner in whose office the award is on file shall,
132 upon the request of the clerk of said court, send to the clerk a certified
133 copy of such findings and award. In cases where, through the fault or
134 neglect of the employer or insurer, medical treatment or adjustments
135 of compensation have been unduly delayed, or where through such
136 fault or neglect, payments have been unduly delayed, the
137 commissioner may include in the award interest at the rate prescribed
138 in section 37-3a and a reasonable attorney's fee in the case of undue
139 delay in medical treatment or adjustments of compensation and may
140 include in the award in the case of undue delay in payments of
141 compensation, interest at twelve per cent per annum and a reasonable
142 attorney's fee. Payments not commenced within thirty-five days after
143 the filing of a written notice of claim shall be presumed to be unduly
144 delayed unless a notice to contest the claim is filed in accordance with
145 section 31-297. In cases where there has been delay in either
146 adjustment or payment, which delay has not been due to the fault or
147 neglect of the employer or insurer, whether such delay was caused by
148 appeals or otherwise, the commissioner may allow interest at such

149 rate, not to exceed the rate prescribed in section 37-3a, as may be fair
150 and reasonable, taking into account whatever advantage the employer
151 or insurer, as the case may be, may have had from the use of the
152 money, the burden of showing that the rate in such case should be less
153 than the rate prescribed in section 37-3a to be upon the employer or
154 insurer. In cases where the claimant prevails and the commissioner
155 finds that the employer or insurer has unreasonably contested liability,
156 the commissioner may allow to the claimant a reasonable attorney's
157 fee. No employer or insurer shall discontinue or reduce payment on
158 account of total or partial incapacity under any such award, if it is
159 claimed by or on behalf of the injured person that such person's
160 incapacity still continues, unless such employer or insurer notifies the
161 commissioner and the employee of such proposed discontinuance or
162 reduction in the manner prescribed in section 31-296 and the
163 commissioner specifically approves such discontinuance or reduction
164 in writing. The commissioner shall render the decision within fourteen
165 days of receipt of such notice and shall forward to all parties to the
166 claim a copy of the decision not later than seven days after the decision
167 has been rendered. If the decision of the commissioner finds for the
168 employer or insurer, the injured person shall return any wrongful
169 payments received from the day designated by the commissioner as
170 the effective date for the discontinuance or reduction of benefits. Any
171 employee whose benefits for total incapacity are discontinued under
172 the provisions of this section and who is entitled to receive benefits for
173 partial incapacity as a result of an award, shall receive those benefits
174 commencing the day following the designated effective date for the
175 discontinuance of benefits for total incapacity. In any case where the
176 commissioner finds that the employer or insurer has discontinued or
177 reduced any such payment without having given such notice and
178 without the commissioner having approved such discontinuance or
179 reduction in writing, the commissioner shall allow the claimant a
180 reasonable attorney's fee together with interest at the rate prescribed in
181 section 37-3a on the discontinued or reduced payments."